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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 345891

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

Melissa Jade Peterson, Appellant
v.
Sheila Kay Peterson, Respondent

ON REVIEW FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR WALLA WALLA COUNTY

OPENING BRIEF OF APPELLANT

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I. Introduction

This case involves one parent using forum shopping to exclude, or at least radically limit, the role of the other parent in their child's life. Melissa Peterson and Sheila Peterson¹ met and began dating, in Oregon, in 1989. They had a child together in summer of 2007. Melissa transitioned from male to female shortly after the child was born. The couple continued living together until the child entered in school.

Sheila filed for divorce in Oregon, it was finalized in April 2014. Sheila moved to Walla Walla, approximately 10 miles, or about 17 minutes of driving, from the family home in Milton Freewater, Oregon, where Melissa continues to reside. After Melissa acknowledged her right to seek court enforcement of the parenting plan, Sheila availed herself of the Walla Walla Superior Court to modify the parenting plan.

Sheila's forum shopping worked and she found a judge that failed to apply the law. Melissa's role in the child's life was radically reduced until Oregon asserted that it was retaining jurisdiction and required the parties to follow the Oregon parenting plan.

The Washington court refused to dismiss the case even after Oregon court held all Washington orders were void. Sheila continues to seek to avail herself of the Washington court. Melissa seeks relief in this court.

¹ For clarity, the parties will be referred to by their first names.

II. Assignments of Error

1. The trial court erred by denying the Motion to Dismiss due to a lack of subject matter jurisdiction under the UCCJEA and Oregon Retaining Continuing, Exclusive Jurisdiction.
2. The Court erred in repeatedly entering temporary restraints for over a year without a hearing on the restraints and incorporating the restraints in the temporary restraints in temporary parenting plan.
3. Judge Wolfram erred in failing to recuse itself, especially in light of his failure to cite any reason other than bias for its decisions that went against statutes or court rules and the overwhelming evidence that his decision was not based on the best interest of the child.

III. Statement of the Case

A. Procedural History

1) Jurisdictional Issue

The initial parenting plan was entered in Oregon in April 2014. CP 11-36. Sheila filed for protection order in Walla Walla Superior Court on October 29, 2014. CP 63-79. She then filed a motion to modify the parenting on November 3, 2013. CP 03-10. On May 9, 2016, Melissa raised the issue of lack of subject matter jurisdiction under the UCCJEA, to vacate all

orders, and for Judge Wolfram to recuse himself for failing to follow the law with regard to essentially every issue put before him. CP 1051-1246. The court denied Melissa's motions at a hearing on May 16, 2016. CP 1253, RP 104-120. The written orders were entered on June 22, 2016. CP 1256-1258. The court stated it would have a call with the Oregon court to resolve any competing jurisdiction questions. The written orders stated this call would happen within three weeks of entry of the order. CP 1258.

Melissa filed a Motion for Discretionary review on July 18, 2016. Sheila filed a motion in Oregon on July 6, 2016 for Oregon to decline jurisdiction, however her counsel did not immediately note this motion. When it finally noted the motion, it was set to be heard on September 23, 2016, but was postponed until October 3, 2016.

It appears that in lieu of this hearing, that Oregon had a UCCJEA conference call with Washington, for on September 23, 2016. In response to this conference call, Judge Wolfram advised the parties that he was "transferring" the case to Oregon. CP 1350. This "transfer" occurred approximately 130 after oral argument in Washington on the jurisdictional issue.

At the October 3, 2016 hearing, the Oregon court ruled that it had and would retain continuing, exclusive jurisdiction, that all Washington Orders were void, and that the parties were required to follow the Oregon

parenting plan. CP 1340 -41. (For the court's convenience, this order is also attached as an appendix to this motion).

Sheila availed herself of the Washington court, via an email to the court's bailiff, to address the approximately \$1,465 plus postage that it would cost to mail the record to Oregon. CP 1344-1346. At first Judge Wolfram ordered Melissa to be responsible for the costs associated with the transfer. CP 1345. Melissa objected to the transfer as well as being required to pay for orders that Oregon already ruled were void. CP 1365-66. Melissa's counsel provided the language in the Oregon order that the Washington orders were void and again sought to have Judge Wolfram revise his ruling, or at the very least provide the parties with findings of fact and conclusions of law that would explain on what basis he was asserting jurisdiction. The only response Judge Wolfram provided was to alter the language in the order stating that Melissa would be required to pay for the costs to requiring the parties to turn to the Oregon court to determine who should pay for the copy costs. CP 1374.

In response to the changes in the case, the Court of Appeals allowed the Motion for Discretionary review to be converted to an appeal.

2) Procedural History of Other Legal Issues

For the most part, between the filing of the case and Oregon asserting jurisdiction, this case languished on the docket of the Walla Walla

Superior Court. The court never held a hearing on the validity of the temporary orders, instead the court simply continued the temporary restraining orders for over a year. The court entered the restraining orders on November 3, 2014 (CP 105-108), November 18, 2014 (CP 112), November 21, 2104 (CP 116), December 1, 2014 (CP 121), December 29, 2014 (CP 124); January 23, 2015 (CP 177), February 2, 2105, (CP 200), February 20, 2015 (CP 207), March 9, 2015 (CP 217), April 20, 2015 (CP 233), June 1, 2015 (CP 235), July 13, 2015 (CP 237), August 24, 2015 (CP 454), September 8, 2015 (CP 494), November 15, 2015 (CP 499), November 30, 2015 (CP 611), and December 21, 2015 (CP 656).

At the March 9, 2015 hearing, after the highly positive CR 35 report by Dr. Rubin, Melissa requested the lifting of the restraints. Without even providing Sheila's counsel the opportunity to put forth any reason to retain the temporary restraints, the court responded to the request to lift restraints with: "That's not going to happen." RP 35.

Because the court was continuing to issue restraints without a hearing, in November 2015, Melissa filed a formal motion objecting to reissuance of any further restraints. CP 522-530. Citing, as the sole basis for continuing the restraints, "It's the recommendation at this point from Dr.

Lontz” (RP 96), the Court ordered the parties incorporate the restraints into a temporary parenting plan.² RP 68, 92-97.

Dr. Lontz was the second CR 35 examiner. In Sheila’s initial motion regarding the parenting plan modification she requested a CR 35 examination of Melissa. Instead of focusing on the legal issues, Melissa’s initial counsel sought to try and appease the concerns identified in Sheila’s petition for modification. This lead Melissa’s initial counsel to seek to coordinate the requested CR 35 examination by Dr. Rubin, a local, highly respected expert who had immediate availability. Dr. Rubin was intended to be a neutral examiner and both parties had access to the expert. CP 170-173, CP 220-223, CP 1320-1327.

At the January 29, 2015 hearing, the court initiated the suggestion that Sheila’s counsel could do a second psychological exam at Sheila’s expense. RP 22. Sheila indicated that she was willing to pay for it and the court orally ordered the second psychological examination. RP 24. The court ordered this to occur within two weeks, to the extent possible, suggested Ron Page or Phillip Barnard. RP 27. At this hearing the court made it clear supervised visitation would continue until the second evaluation. RP 29.

² The temporary parenting plan will be provided by the superior court pursuant to a supplemental designation of clerk’s papers. This will start with CP 1375. For the court’s convenience, the temporary parenting plan is attached to the appendix.

At the January 29, 2015 hearing, where the court had already authorized two CR 35 examinations of Melissa, the Court refused to appoint a guardian ad litem. RP 32.

At the March 9, 2015 hearing, Melissa's attorney objected to the restraints, especially given the fact that opposing counsel had yet to provide a name for a proposed CR 35 examiner. RP 35. The Court allowed the restraints to continue and made no demands of Sheila to identify a CR 35 examiner or to comply with the procedural rules of CR 35 and file a written motion for a CR 35 examination. Melissa's counsel again raised the about the restraints and voiced concern that Sheila's counsel was engaging in a delay game regarding the evaluator at the April 20, 2015 hearing. Again, the court did not require Sheila to identify a CR 35 examiner or properly file a motion for a CR 35 examination. RP 39.

On August 13, 2015, Sheila filed the first and only motion for CR 35 examination. She proposed Dr. Lontz out of Spokane. Melissa objected to being required to travel to Spokane instead of using a local expert. Her counsel provided information that Dr. Barnard, who the court had previously suggested, and could perform the evaluation locally for \$1,670. CP 442.

At the August 24, 2015 hearing, the court inquired as to Sheila's objection to Dr. Barnard. Sheila's attorney alleged that cost was the

problem, claiming he would cost \$10,000. RP 48. The court continued the matter and the parties came back on September 8, 2015. At this hearing, Melissa's counsel pointed out that Sheila was not simply seeking a CR 35 examination, but that she wanted Melissa to undergo a parental competency evaluation. RP 56. The court ruled that it would be CR 35 psychological examination by Dr. Lontz out of Spokane instead of a local expert. RP 59.

This delay was caused by the failure to follow the Civil Rules. The rule regarding obtaining physical and mental examinations states:

The order may be made only on a motion for good cause shown... and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

CR 35(a)(1)

Had the simple procedural steps required for a CR 35 examination been followed there would not have been a delay of a year between when Sheila first stated she wanted Melissa to undergo a CR 35 examination and when her expert finally submitted his report.

Dr. Lontz's report was provided on November 23, 2016. CP 501-513. Upon review of Dr. Lontz's report, Melissa immediately filed a motion to strike his report for the failure to follow CR 35(a)(3) which requires an audiotape recording unless a court orders otherwise. CP 596-600. Dr. Lontz admitted in his report that Melissa had attempted to audio record, as was her right, but that Dr. Lontz denied her request and required her to power

down her phone, which she was using to do the audio recording. Dr. Lontz then used Melissa's efforts to follow the CR 35 examination rules against her in his analysis of her behavior. CP 597. The motion to strike pointed out that Dr. Lontz rejected Melissa's counselor and Dr. Rubin's testing believing that Melissa had simply fooled Dr. Rubin and her counselor. CP 598.

The motion to strike Dr. Lontz's report also objected to Dr. Lontz's recommendations regarding the parenting plan, noting that Dr. Lontz had not had any contact with the child and has no information about Melissa's parenting and no information about the child. CP 599. The court found that CR 35 was not violated. RP 73 and 77. The court also denied the motion for Sheila to have submit to a similar CR 35 examination. CP 690.

At this same hearing, the court brought up a provision in Sheila's proposed parenting plan that Melissa obtain a separate psychiatric consult. The court stated that it would not order that done in a parenting plan but it "would be helpful for you client." RP 94.

Despite the parenting plan modification case having been before the court for over a year, having two competing expert opinions about Melissa's mental health, and no other information in the file, other than Sheila's declarations that were in any way negative of Melissa, the court kept insisting on the types of restraints you would expect of a pedophile and his

statements in court clearly conveyed that he believed there was something wrong with Melissa, despite his refusal to sight any facts that support his opinion.

In order to obtain evidence in the record regarding the best interest of the child, Melissa filed a motion to appoint a guardian ad litem on February 15, 2016. **CP 704-707**. In response to this motion the court stated:

I am not sure I necessarily am in need of a Guardian ad Litem report, frankly. But if that, again is something that you want to take on from a financial standpoint, then that's fine.
RP 102.

The GAL completed her report on August 4, 2016, recommending that the parties return to the Oregon parenting plan. CP 1262-1319. The GAL had no concerns about Melissa or Melissa's relationship to the child.

The court's statements at the hearings, that indicated that he had already made up his mind in this case and was not open to the significant amount of evidence that contradicted his view, prompted Melissa to file the motion to recuse Judge Wolfram. While gathering the evidence to support this motion, it was discovered that Sheila had not followed the required UCCJEA procedural steps and Oregon had never declined jurisdiction. Consequently, the motion to recuse became secondary to the motion dismiss pursuant to lack of subject matter jurisdiction. **CP 1051-1069**.

B. Statement of Facts

Melissa and Sheila Peterson married October 22, 1994. CP 11. They had a daughter who was born in the summer of 2007. CP 03. Shortly after their daughter was born, Melissa began transitioning to living as a woman instead of a man. CP 1072. Sheila struggled with this and shortly after the child began schooling and it became more public that the child was being raised by two mothers, Sheila left Melissa. CP 55. The separation occurred in October 2013. CP 54. Their divorce was finalized on April 29, 2104. CP 11.

In October 2014, Melissa began to be more insistent that Sheila follow the residential schedule. When Sheila continued to cancel visits at the last minute, Melissa suggested she would pursue court action. CP 1131-32.

Prior to October 2014, at no point in their relationship had there been any police reports, CPS investigations, or even any court proceedings where either party had expressed any concerns regarding the other parent's parenting or the residential schedule. CP 1262-1265. During the Oregon divorce, Sheila did not raise a single concern about Melisa's parenting. Then, in October 2014, after Melissa had been pushing Sheila to follow the plan, the child told Melissa that she heard Sheila and a man Melissa thought

was Sheila's boyfriend, that they were trying to figure out how to kill Melissa.

Upon hearing this information, Melissa filed the police report. CP 585. The police report stated Sheila told the officer that the child's counselor had reported to her that the child made the same statement to the counselor. CP 585.

In addition to filing a police report, Melissa attempted to talk with Sheila, stopping by her office for lunch as they had been discussing over text message for weeks. CP 1126-29. Melissa also posted on Facebook about what the child said, hoping that if there was any truth in what the child said, that making the threat public would deter any further action by Sheila.

This is when Sheila availed herself of the Washington courts, first seeking a protection order and then an petition to modify the Oregon parenting plan. CP 63. Sheila provided a copy of the Oregon parenting plan, but did not affirmatively alert the court to the jurisdictional issue of modifying an out-of-state parenting plan. Sheila did not she seek emergency jurisdiction (or follow the requirements connected to emergency jurisdiction of reaching out to the original jurisdiction as soon as possible). CP 71.

Nothing has changed in the parties' residences since the finalization of their decree, Sheila continued to reside in Walla Walla and Melissa

continued to reside in Milton Freewater, Oregon, a distance of approximately 10 miles, or about 17 minutes of driving. During the time after separation until Sheila filed for restraints, the child exercised her residential time with Melissa in Oregon. After the temporary parenting plan was entered, the child returned to exercising her residential time in Oregon.

Under the Oregon parenting plan, Melissa was supposed to have 102 overnights per year. CP 31. Until Oregon affirmed it had jurisdiction, Melissa had no overnights with the child. Her extended family barely got to see the child.

Currently the case is pending in Oregon, Melissa has filed to modify the order and become the child's primary residential parent. Sheila's Oregon attorney is using the Washington action as leverage in these negotiations and resubmitting a request to the Oregon court to have the case heard in Washington. See Appendix.

IV. Argument

A. Standard of Review

Questions of subject matter jurisdiction are reviewed *de novo*. *In re Marriage of McDermott*, 175 Wn. App. 467, 479, 307 P.3d 717, 723 (Wash. App. 2013), *In re Parentage of Ruff*, 168 Wash. App. 109, 115, 275 P.3d 1175, 1178 (Wash. App. 2012). The standard of review of legal

issues is also *de novo*. *In re Custody of E.A.T.W.*, 168 Wn. 2d 335, 227 P.3d 1284 (2010).

1) The trial court erred by denying the Motion to Dismiss due a lack of subject matter jurisdiction under the UCCJEA and the Oregon Retaining Continuing, Exclusive Jurisdiction.

The UCCJEA attempts to deal with the problems of competing jurisdictions entering conflicting interstate child custody orders, forum shopping, and the drawn out and complex child custody legal proceedings often encountered by parties where multiple states are involved. *In Re Custody of A.C.*, 165 Wn. 568, 200 P.3d 689, 691 (2009). Unless all the parties and the child no longer live in the state that made the initial determination sought to be modified, the *issuing state* must first decide it does not have jurisdiction or decline jurisdiction. *Id.*

This case involves a pre-existing, finalized, Oregon Parenting Plan that Sheila sought to be modified in Washington State.³ Washington State adopted the Uniform Child Custody and Jurisdiction and Enforcement Act (“UCCJEA”) under RCW 26.27, *et. seq.* Oregon has a similar UCCJEA

³ Sheila never requested a temporary order pursuant to temporary jurisdiction. As such, briefing about temporary emergency jurisdiction will be limited to this footnote. Temporary jurisdiction would not have been appropriate an appropriate remedy. In addition. Temporary emergency jurisdiction is to be undertaken only in extraordinary circumstances, such as where a child would be placed in imminent danger if jurisdiction were not exercised. *In re Marriage of Ruff*, 168 Wn. App. 109, 275 P.3d 1175 (2012). A discussion of temporary emergency jurisdiction in this case would also be inappropriate because of the actions that occurred, temporary emergency jurisdiction does not grant a court the authority to modify an out-of-state parenting. *Id.*. Here the trial court insists it has jurisdiction to modify the Oregon orders.

provision under Or. Rev. Stat. Ann. § 109.701 *et seq.* (See Appendix for copies of the statutes).

Washington and Oregon statutes have similar provisions that each state retains exclusive, continuing jurisdiction until the state issuing the original order determines that there are no longer significant contacts with the state. *See* RCW 26.27.211 and ORSA 109.744.

Both states have similar provisions that each state does not have the jurisdiction to modify a child custody determination made by a court of another state unless a court of this state has authority to make an initial determination and the other state no longer has exclusive, continuing jurisdiction or the parents and the child are no longer in the issuing state. *See* RCW 26.27.221 and ORSA 109.747.

These provisions of the UCCJEA limit the authority over modification of out-of-state parenting plans/custody orders unless procedural steps are followed. *In re Marriage of Greenlaw*, 123 Wn.2d 593, 600, 689 P2d. 1024, 1029 (Wash. 1994). (The UCCJEA provisions are a limitation upon a court's assumption of jurisdiction.) The limitation on the authority to hear the case is referred to by the statute and by case law as a limitation of the court's subject matter jurisdiction.⁴ *See In re Custody of*

⁴ One case rejected the language that the UCCJEA divests the courts of subject matter jurisdiction, instead the court framed the issue as limitation on the *exercise* of the its subject matter jurisdiction. *In re Marriage of McDermott*, 175 Wn. App. 467, 482, 307

A.C., 165 Wn. 2d 568, 200 P3d 689 (2009) (“until Montana divested itself of jurisdiction over A.C., issues concerning A.C.’s custody are properly for Montana, not Washington to decide. We reverse and remand to the superior court with instructions to dismiss for want of subject matter jurisdiction[.]”). *In re Parentage of Ruff*, 168 Wn. App. 109, 116-117, 275 P.3d 1175, 1178-79. (Wash. App. 2012) (The court dismissed Washington actions for lack of subject matter jurisdiction.).

The cases are consistent that UCCJEA’s limitation on a state’s authority to modify an out-of-state parenting plan cannot be waived and can be raised at any time. *In re Parentage of Ruff*, 168 Wn. App. 118, 275 P.3d 1175, 1179-80.

The only remedy for a lack of subject matter jurisdiction is for the case to be dismissed. *In re Parentage of Ruff*, 168 Wn. App. 119, 275 P.3d 1180 (“The rule is well known and universally respected that a court lacking jurisdiction of any matter may do nothing other than enter an order of dismissal.”), *In re Marriag of A.C.*, 165 Wn. 2d 578, 200 P3d 693 (case dismissed for want of subject matter jurisdiction).

P3d 717, 724 (Wash. App. 2013). Despite the slightly different framing of the issue, the *McDermott* court applied the same analysis that would be used for the *existence* of subject matter jurisdiction versus the *exercise* of subject matter jurisdiction, i.e., that it is reviewed *de novo*, that it cannot be waived, and it can be raised at any time

The trial court erred by asserting jurisdiction and refusing to dismiss the case. The initial assertion of jurisdiction appears to be based in using the analysis for determining what state, between competing states, has jurisdiction over an *initial* parenting plan determination as opposed to the modification of a pre-existing out-of-state order. CP 1256-1258. At paragraph 6 on CP 1257, the court noted that the child resides in Walla Walla and parenting plans may be filed in the county where the child resides.

At Paragraph 7 of the court's order, the court stated that a UCCJEA conference under RCW 26.27.251 would resolve any issues as to whether the case should be heard in Oregon or Washington. The court made the determination that a UCCJEA conference could resolve the jurisdictional issues over Melissa's objection that UCCJEA conference only applies to determining which court should hear the matter at the initial phase of the litigation. In response, to the objection that sought to clarify the difference between modifying an out-of-state order and commencing an action, the court stated, "So if you don't want it, the matter is going to stay here." RP 115. The objection of the inappropriateness of the conference was preserved but, believing the Oregon court would retain jurisdiction, Melissa's counsel requested the conference proceed.

The final, written, order required the conference to occur within three weeks of entry of the order, which was entered on June 22, 2016. The hearing was on May 16, 2016. The UCCJEA conference until September 23, 2016. CP 1333.

The court also seemed reluctant to relinquish the case because of the amount of time and activity that had occurred in the case while in Washington. This is not a valid reason to retain jurisdiction. In *In Re A.C.* the parent moved to dismiss under the UCCJEA more than a year after the case had been filed. It was initially denied, trial was held, and the Supreme Court reversed the trial court and the court of appeals affirming that jurisdictional component can be raised at any time. *165 Wn.2d 577-578, 200 P.2d 693.*

In *In re Parentage of Ruff*, the issue of subject matter jurisdiction was raised for the first time on appeal. The father, who raised the issue of subject matter, had even initiated a modification action in Washington. Despite the father availing himself of the Washington court and asking the court to modify the order, the court affirmed that an order entered by a court without subject matter jurisdiction is void. *168 Wn. App. 116, 275 P.2d 3d 1178-79. See also McDermott, 175 Wn. App 490, 307 P.3d 728.* (Once a state determines another state has jurisdiction, the state “could not properly

exercise its jurisdiction unless a Kansas court first declined to exercise its jurisdiction.)

The court refused to provide its reasoning for transferring the case. Melissa's counsel filed a written objection to the court's initial ruling that Melissa be responsible for cost of transferring the case, providing Oregon's written order which stated, "All Washington orders or judgments entered in Walla Walla Superior Court Case No. 14-3-00284-4, were entered in violation of Oregon's exclusive, continuing jurisdiction, and are therefore void." CP 1365. This objection specifically requested the court provide Findings of Facts and Conclusions of Law to clarify what it was basing its authority to transfer the files instead of dismissing the case. CP 1366. The court refused to provide its reasoning for transferring the case, but did modify its order and not require Melissa to pay the fees and instead required the cost to be determined by Oregon. CP 1374.

2) The Court erred in repeatedly entering temporary restraints for over a year without a hearing on the restraints and incorporating these in the temporary restraints in temporary parenting plan.

If for some reason, this case is not dismissed in its entirety and all orders vacated pursuant to the UCCJEA, all of the protection orders and the temporary parenting plan should be vacated based on the court's failure to follow the law. The court in this case issued "Temporary Restraining Order"

issue and reissued the temporary protection orders approximately 17 times, from November 2014 to December 2015 without ever having a hearing or issuing any findings of fact.

The initial protection order appeared to be based on Melissa showing up at Sheila's work. However, on January 27, 2015, Sheila affirmatively stated, "I did not file for a protection order because of Melissa showing up at Beth's school or my place of employment[.]" CP 180. She requested that the protection order continue because "this is the best interest of Beth." CP 182. Despite the efforts of Melissa's counsel to get the restraints removed or even have a reason for the restraints, the court never provided this. RP 11 (allowing the restraints to be continued without a hearing for a month because it would be more convenient and cost-effective for Sheila). RP 25 (continuing the restraints pending a second CR 35 examination, even though the first examination was highly positive of Melissa and her mental health). RP 35 (In response to Melissa's attorney asking for the restraints to be lifted, the court responded, "That's not going to happen.").

From January 21, 2015 until November 23, 2015, the only expert had reported, "[g]iven all that she has been through in the last several years and probably her whole life, it is amazing how non-severe her psychological history is... There appears to be no evidence of any severe pathology which

would result in danger to her children or to others.” CP 173. Despite this the continued restraints approximately ten times, seemingly on the sole basis of waiting for Sheila’s counsel to identify an expert and for Melissa to undergo a second CR 35 examination.

In August 2015, when the court continued to reissue the restraints without hearing, Melissa provided a declaration of one of the primary visitation supervisors who affirmatively stated, “I have no concerns for Elizabeth’s safety...I believe that visits should go unsupervised.” CP 440. She provided more supervised visitation reports. These reports continued to demonstrate that Melissa and the child had a strong relations and there was no need for supervisor intervention. (CP 264-378).⁵ Still the restraints continued.

Despite the volume of records demonstrating that Melissa had a strong healthy relationship with the child, the court continued issuing restraints. The court never required Sheila to demonstrate that she had a reasonable fear of imminent harm. This was not a two-week delay that might allow an appellate court to decline to address the questionable nature of the legal or factual basis of the court in issuing the restraints; this was a delay of seven months for opposing counsel to even identify an expert.

⁵ See also 723 -980, specifically 727-737 for a table summarizing the supervised visitations from November 25, 2014 to February 27, 2016.

There is no effort to even pretend some facts could exist that might lend itself to reasonable belief of imminent harm. This is an egregious use of temporary restraints. There has never been any facts promulgated, other than Sheila's self-serving statements, that support the notion that Melissa had any kind of mental health issue that would interfere with her parenting. This crucial question about whether any alleged mental health issue that would actually impact her parenting to the extent required for restraints in Washington was never addressed. The court simply held a belief that Melissa had issues that required restraints and refused to cite his reasoning for this belief.

This insistence on restraints that were equivalent to what would be ordered if someone had a history of sexual abuse or violence toward the child, Melissa pointed out that Sheila made Melissa's transgender identity the centerpiece of her concerns for the child in her declarations. CP 529.

Despite raising the concerns that the restrictions had no basis in fact or law, the Court incorporated the restrictions into the temporary parenting plan. When pressed what basis the court was relying on for the restrictions, the court said it was adopting the restrictions suggested by Dr. Lontz, even though, per the court's own instructions, Dr. Lontz was never supposed to make any kind of parenting recommendations. RP 56-59. The court failed

to follow the law and perform a legal analysis for appropriateness of the inclusion of .191 restrictions

There is no basis in the record for .191 restrictions. The Court abused its discretion in capturing the improper temporary restraints proposed by Sheila and echoed by Dr. Lontz, into the parenting plan. Over the course of the year that the case mostly languished in Judge Wolfram's court, Melissa did everything she could to comply with the court's orders, despite believing, correctly, they were unfair. She was present for her daughter in the limited way that she could be there. The only positive of the supervised visitation is there are more than 200 pages of documents that show a loving, patient, relationship between Melissa and the child.

Melissa requests the court reverse the trial court's improper issuance of these orders and make clear that all of the restraining orders, the temporary order, and the temporary parenting plan be vacated.

3) The Court Erred in Failing to Recuse itself, especially in light of its failure to cite any reason other than bias for its decisions that went against the statute or court rules

Reversing and remanding this case for a dismissal pursuant to lack of subject matter jurisdiction will not resolve the issue of Judge Wolfram's clear bias against Melissa. If Sheila continues violating the parenting plan, like she did prior to seeking modification, and Melissa is required to turn to

the court for enforcement, Melissa will need to register the Oregon Order in Washington and file a motion for contempt in Walla Walla County, where Sheila resides. RCW 26.27.441.

A trial court's denial of a motion to recuse is reviewed for an abuse of discretion. *In re Marriage of Meredith*, 148 Wash. App. 887, 903, 201 P.3d 1056, 1064 (2009). A trial court is presumed to perform its functions regularly and properly without bias or prejudice. *Id.* Under the appearance of fairness doctrine, a judicial proceeding is valid only if a reasonably prudent and disinterested person would conclude that all parties obtained a fair, impartial, and neutral hearing. *Id.* (Citing *State v. Bilal*, 77 Wn. App. 720, 722, 893 P.2d 674, review denied, 127 Wn.2d 1013 (1995).)

The briefing regarding the handling of the CR 35 examination and the restraining orders unequivocally rebut the presumption that the trial court performed its function regularly or properly.

The record, which has been provided to the court to demonstrate that the vast majority of the approximately 1,4000 pages overwhelming support Melissa and her strong relationship with her daughter. Melissa provided declarations of friends (CP 128-129, CP140-142), family members (CP 130-131, CP 137-139, CP 488-491), her counselor (CP 132-136, CP 210-211, 227-228, CP 483-484) the parenting supervisor (CP 225-226, CP 439-440), the parenting evaluations (provided throughout the case, a summary

with the parenting evaluations in chronological order is available at CP 723-980) the evaluation of Dr. Rubin (CP 169-223), the internationally recognized expert Dr. Smith's review of the expert reports of Dr. Lontz and Dr. Rubin (CP1045-1050), and the GAL report, which recommended no modification and following the Oregon parenting plan (CP1266-1319). In his critique of Dr. Lontz's report, Dr. Smith noted that only three of the eight extensive tests Dr. Lontz performed were related to emotional functions or psychotherapy (the others were neuro-cognitive or academic), Dr. Smith identified several places where Dr. Lontz's conclusions were not supported by the evidence or applied out of dates standards and when correct standards were applied, the testing did not support Dr. Lontz's conclusion. Dr. Smith stated the testing contained nothing that would support Dr. Lontz's Borderline Personality Disorder diagnosis and notes that Dr. Lontz appeared to base this on Facebook posts.

All that Sheila provided (1) her own declarations, and (2) declarations of her attorney, who had no factual knowledge of Melissa or Sheila's relationship with the child. Sheila made many representations about what the counselor said, but then she also repeatedly said that the Melissa refused to meet with the counselor, when the counselor was refusing to talk with Melissa until Sheila signed a release. (CP 709, CP 1075). The only information from the counselor is connected to the GAL

report, where the counselor states, “The focus of treatment was on three main goals: 1) Increase Elizabeth’s ability to be honest, 2) Learn how to verbalize her thoughts and feelings, 3) Learn how to manage emotions positively.” The counselor stated that her only concern was the unresolved court issue. She expressed no concern about Melissa’s relationship with the child, she merely acknowledged that Sheila expressed concerns. CP 1315-1316.

Despite the lack of a personal history that would flag mental illness (frequent interactions with the law, hospitalizations, etc), and the wealth of information in the file that supported Melissa’s mental fitness and strong parenting skills, the court appeared to believe that Melissa was mentally unsound to such a degree that it required placing the kinds of restrictions a court would place on a pedophile.

The court refused to affirmatively state what facts would support the imposition of such severe restrictions. The only reasonable conclusion is that the court has a bias against transgender people, or Melissa for some reason Judge Wolfram refused to identify.

This bias led the court to fail to follow the law or civil rules. Even if this case involved a Washington state court order and the UCCJEA was not an issue, the court failed to follow the cornerstone issue regarding parenting plans in Washington State, they are supposed to encourage each parent to

maintain a loving, stable, and nurturing relationship with the child. RCW 26.09.187(a). Modifications, with few exceptions, are only supposed to occur if there is a substantial change of circumstances and is and is necessary to serve the best interests of the child. RCW 26.09.260. If a court is going to place restrictions on a parent's residential time, those restrictions must be based in the provisions outlined in RCW 26.09.191 and the court must enter findings regarding the parents conduct either with the child or based on enumerated reasons. *In re Marriage of Chandola*, 180 Wn.2d 632, 642, 327 P.3d 644, 649-50 (2014) (“(RCW 26.09.191(3) bars the trial court from “preclud[ing] or limit[ing] any provisions of the parenting plan” (i.e., restricting parental conduct) unless the evidence shows that “[a] parent's ... conduct may have an adverse effect on the child's best interests.”).”

The only evidence in the record that there are any problems with Melissa's parenting are Sheila's declarations, a bulk of which focus on Melissa's transgender identity, and the Dr. Lontz's CR 35 examination. Dr. Lontz's examination is refuted on its face and by an internationally recognized expert. Dr. Smith noted in his review, this report is incredibly flawed and the findings do not match the raw data.

The overwhelming evidence in this case supports a conclusion that Judge Wolfram has a bias against Melissa. The court need not delve into Judge Wolfram's psyche and try and determine the reason for his bias. The

court can simply look at the highly irregular way that Judge Wofram managed this case.

No reasonably prudent and disinterested person could conclude that all parties obtained a fair, impartial, and neutral hearing. As such, Judge Wolfram abused his discretion when he failed to recuse himself from this case and any future case involving this family.

V. Motion for Attorney Fees

Melissa seeks attorney fees based on her need relative to Sheila's ability to pay, on the authority of RAP 18.1, RCW 26.10.080, and RCW 26.27.511(1). The statute provides for an award of attorney's fees from time to time after considering the financial resources of both parties.

Here, Melissa has been put at a significant financial disadvantage through the unnecessary requirement to pay not only to pursue this case in Washington, but for the unnecessary supervised visitation that Melissa bore the sole responsibility to pay. The attorney's fees and the costs of complying with the improper orders has been a substantial cost. Had Sheila not engaged in forum shopping, it is unlikely these expenses would have ever been incurred. This conclusion is supported by Oregon's refusal to accept the Washington orders and requirement of the parties to follow the original plan. It is also supported by the declaration of the visitation supervisor as

well as the voluminous supervised visitation reports that reflect that there are no concerns about Melissa's parenting.

The *Ruff* court noted that under the UCCJEA, RCW 26.27.511(1) provides for attorneys fees for the prevailing party. The court held that attorneys fees are justifiable only when the party seeking to invade jurisdiction has engaged in unjustifiable conduct. Sheila has engaged in unjustifiable conduct.

Sheila engaged in forum shopping, filing this case in Washington a mere six months after the final order was entered. The six-month delay is unlikely coincidental as it allowed her to argue that Washington was the home state jurisdiction. When it became apparent that the court would continue to enter the temporary restraints without question and without demanding Sheila move her case for modification forward, she stalled until Melissa's attorney forced the issue.

Once the jurisdictional issue was raised by Melissa in May, Sheila waited until July 6, 2016, to pursue the action in Oregon. Then she appeared to wait to note her motion before the Oregon court until September, and it was delayed once by the court until October 3, 2016. Even after the court entered its order retaining continuing, exclusive jurisdiction, Sheila continued to turn to the court in Washington for help. As recently as December 2, 2016, Sheila has used the existence of the Washington case to

try and get the Oregon court to re-consider jurisdiction. She simply refuses to accept the law regarding continuing, exclusive jurisdiction and wants to go before a court that has proven it will decide in her favor.

The emotional costs of the prolonged requirement for supervised visitation and thwarting of a normalized relationship between Melissa and her child cannot be compensated in this proceeding. “[T]ime lost with your child is something you can never get back. *In re Custody of A.C.*, 165 Wn. 2d 586, 582, 200 P.2d 689 (2009) (Johnson J.J., concurring). Nevertheless, the financial costs can be ameliorated. Melissa asks this Court to order Sheila to pay her fees on appeal.

VI. Conclusion

Washington state never should have accepted the modification action. Once it was clear that Oregon had continuing, exclusive jurisdiction under the UCCJEA, this case should have been dismissed and all Washington orders vacated.

Even if the UCCJEA was not a factor in this case, adequate cause for modification was never supported by the facts. This case should not have been allowed to languish on the court’s docket with automatic renewals of restraining orders that had no basis in fact or law. The overwhelming evidence in the court file is supportive of Melissa’s mental health and her

relationship with her daughter. Judge Wolfram clearly had a bias that Melissa has some sort of mental health issue, based on her lack of any significant history, like run-ins with the law, hospitalizations, etc., and the strong reports of Dr. Rubin and Melissa's counselor, there seems to be one reason why the Court would impose the harshest restrictions upon Melissa – the court believes that transgender people are sexual deviants equivalent to pedophiles and no amount of evidence of Melissa's excellent parenting was going to change the court's mind. This is an extreme abuse of discretion on the part of Judge Wolfram that requires his recusal.

It should have not taken over a year and a half for Melissa to have a normalized relationship with her daughter. From the end of October 2014 until November 2016, after Oregon court affirmed jurisdiction and required the parties to follow the Oregon parenting plan, Melissa did not have a single overnight with her daughter who was between 7 and 9. These are formative years that were interfered with. Melissa has exhausted her financial resources complying with the court orders for supervised visitation and hiring attorneys to deal with the dispute in two states.

Melissa requests this court provide some peace of mind through reversing the trial court's decision to retain jurisdiction, remanding for orders to dismiss and to award attorney's fees and sanctions for the actions

at the trial level. Melissa further requests an award of attorney's for the appeal and reimbursement for the costs incurred for supervised visitation.

January 7, 2017

Respectfully submitted,



Jill Mullins-Cannon, WSBA No. 41535
Attorney for Melissa Peterson, Appellant
Justice & Equality Legal Services, PLLC
600 Winslow Way, E. Suite 232
Bainbridge Island, WA 98110
Phone: (360) 362-0412
Email: jill@justiceandequalityls.com

INDEX TO APPENDIX

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A	001	Washington and Oregon UCCJEA statues
B	002	Oregon Order Retaining Jurisdiction
C	006	Washington Court Order Retaining Jurisdiction
D	009	Washington Orders Transferring the Washington Case to Oregon
E	012	Oregon Proceedings where Counsel is using the Washington case
F	018	Washington Temporary Parenting Plan

Appendix A

RCW 26.27.211

Exclusive, continuing jurisdiction.

(1) Except as otherwise provided in RCW 26.27.231, a court of this state that has made a child custody determination consistent with RCW 26.27.201 or 26.27.221 has exclusive, continuing jurisdiction over the determination until:

(a) A court of this state determines that neither the child, the child's parents, and any person acting as a parent do not have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

(b) A court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

(2) A court of this state that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under RCW 26.27.201.

[2001 c 65 § 202.]

ORS 109.744

Exclusive, continuing jurisdiction.

(1) Except as otherwise provided in ORS 109.751, a court of this state that has made a child custody determination consistent with ORS 109.741 or 109.747 has exclusive, continuing jurisdiction over the determination until:

(a) A court of this state determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training and personal relationships; or

(b) A court of this state or a court of another state determines that the child, the child's parents and any person acting as a parent do not presently reside in this state.

(2) A court of this state that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if the court has jurisdiction to make an initial determination under ORS 109.741.

[1999 c.649 §14]

Appendix B

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3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF UMATILLA

6 In the Matter of the Marriage of:

Case No. CV140244

7 SHEILA KAY PETERSON,

ORDER RE OREGON MAINTAINING
JURISDICTION

8 Petitioner,

9 and

10 MELISSA JADE PETERSON,

11 Respondent.

12 THIS MATTER came before the Honorable Judge Ronald J. Pahl on October 3,
13 2016, for hearing on petitioner's *Motion for Supplemental Judgment Declining Jurisdiction* and
14 respondent's *Objection to Motion for Supplemental Judgment Declining Jurisdiction*. Petitioner's
15 attorney, Rene Erm II, appeared by telephone. Respondent appeared with her attorney,
16 Seth Hantke. Based upon the file herein, arguments of the attorney's in court, and good
17 cause appearing, the court makes the following;

18 FINDINGS OF FACT:

19 1

20 Oregon entered a *General Judgment (By Default) of Dissolution of Marriage* on May 2,
21 2014, with an attached parenting plan.

22 2

23 Petitioner filed a *Petition for Modification/Adjustment of Custody Decree/Parenting*
24 *Plan/Residential Schedule* in the Walla Walla Superior Court, Case No. 14-3-00284-4, on
25 November 3, 2014. The Washington case proceeded for close to two years.
26

Page 1 of 4 - ORDER RE OREGON MAINTAINING JURISDICTION

Case No. CV140244

order jurisdiction.wpd, 11/18/16

GRABLE, HANTKE & HANSEN, LLP
ATTORNEYS AT LAW
PO BOX 1760 ♦ 334 SE SECOND STREET
PENDLETON, OREGON 97801
TELEPHONE NO. (541) 276-1851 ♦ FAX (541) 276-3146

0-000001339

Appellant Appendix 002

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Petitioner filed a *Motion for Supplemental Judgment Declining Jurisdiction* in this court on July 11, 2016.

4

Respondent filed an *Objection to Motion for Supplemental Judgment Declining Jurisdiction* on August 5, 2016.

5

This court held a UCCJEA conference call with the Honorable M. Scott Wolfram on September 23, 2016, to decide the jurisdiction issue.

Based upon the above *Findings of Fact* and the file herein;

IT IS HEREBY ORDERED that:

6

Oregon has exclusive, continuing jurisdiction pursuant to ORS 109.744, and Oregon will maintain jurisdiction over the case.

7

All Washington orders or judgments entered in Walla Walla Superior Court, Case No. 14-3-00284-4, were entered in violation of Oregon's exclusive, continuing jurisdiction, and are therefore void.

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The parenting plan attached to the *General Judgment (By Default) of Dissolution of Marriage* entered on May 2, 2014, is the controlling parenting plan, and the parties shall immediately resume following that parenting plan.

Signed: 10/19/2016 09:35 AM



Ronald J. Pahl, Circuit Court Judge

CERTIFICATE PURSUANT TO UTCR 5.100

I certify that I served a copy of this proposed order on petitioner's attorney by mailing a true copy thereof to petitioner's attorney at his last known address on October 3, 2016, attached as Exhibit 1.

This proposed order is ready for judicial signature because I have served a copy of this order on each party entitled to service and I received objections that I could not resolve with a party despite reasonable efforts to do so. I have attached a letter listing and addressing the objections I received as Exhibit 2.

DATED this 18 day of October, 2016.

s/ Seth Hantke
Seth Hantke
Attorney for Respondent
OSB # 012747
E-mail: shantke@grablelaw.com
Fax No. (541) 276-3146

SUBMITTED BY:

s/ Seth Hantke
Seth Hantke
Attorney for Respondent
OSB # 012747
E-mail: shantke@grablelaw.com
Fax No. (541) 276-3146
DATED: October 18, 2016

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CERTIFICATE OF SERVICE

I hereby certify that I filed the following via the e-filing system: *Order re Oregon Maintaining Jurisdiction*

I further certify that I served one copy of the above-named document(s) on the following via the e-filing system: none.

I further certify that I served the above-named document(s) on the following by mailing a **TRUE COPY** thereof, certified as such, contained in a sealed envelope with postage fully prepaid, addressed to the last known address and deposited in the post office at Pendleton, Oregon on October 18, 2016.

Rene Erm II
Lutcher Phillips & Erm
Attorney at Law
6 East Alder Suite 317
Walla Walla, WA 99362

I further certify that I served the above-named document(s) on the following by hand-delivering a **TRUE COPY** therefore, certified as such, on October 18, 2016.

Steven N. Thomas
Corey, Byler & Rew, LLP
P.O. Box 218
Pendleton, OR 97801

DATED this 18 day of October, 2016.

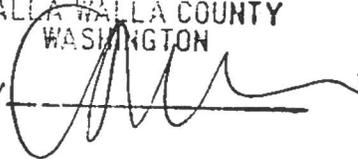
s/ Seth Hantke
Seth Hantke
Attorney for Respondent
OSB # 012747
E-mail: shantke@grablelaw.com
Fax No. (541) 276-3146

Appendix C

FILED
KATHY MARTIN
COUNTY CLERK

2016 JUN 22 A 10: 28

WALLA WALLA COUNTY
WASHINGTON

BY 

Superior Court of Washington
County of: WALLA WALLA

In re Marriage of:

SHEILA KAY PETERSON,

No. 14-3-00284-4

Petitioner,

and

**ORDER DENYING
RESPONDENT'S MOTION TO
DISMISS, VACATE AND RECUSE**

MELISSA JADE PETERSON,

Respondent.

THIS MATTER, having come before the Court on May 16, 2016, on the Respondent's Motions to Dismiss, Vacate Orders, and Disqualify the Judge; the parties, having appeared personally and along with their respective attorneys of record; and The Court, having reviewed this consolidated file and being fully apprised of the bases for the motions and the parties' positions, hereby issues the following:

Findings of Fact and Conclusions of Law

1. Respondent seeks Dismissal of this consolidated action due to lack of subject matter jurisdiction under Washington and Oregon's Uniform Child Custody Jurisdiction and Enforcement Act at RCW 26.27 *et seq.* and Or. Rev. Stat. Ann § 109.701 *et seq.* Respondent contends Washington lacks subject matter jurisdiction to modify an out-of-state custody order when the issuing state

1 has not declined jurisdiction.

2 2. This Court has reviewed the procedural and substantive history of this case, as well as the parallel
3 protective order matter prior to consolidation and thereafter.

4 3. This case was filed in November 2014. It is in pre-trial status. Discovery is ongoing. A Guardian
5 ad Litem investigation is underway, and the report has not been completed. A trial date has not
6 been scheduled.

7 4. The Respondent was personally served, appeared, was represented, acknowledged jurisdiction,
8 and availed herself to the relief of the Court.

9 5. Respondent raised the issue of subject matter jurisdiction for the first time with this motion.

10 6. Significant action has occurred in this case. Washington State superior courts have general
11 jurisdiction and lack subject matter jurisdiction only when expressly denied. Matters involving
12 parenting plans may be filed in the county where the child resides. The child resides in Walla
13 Walla.

14 7. A UCCJEA conference under RCW 26.27.251 will resolve any issues as to whether this case
15 should be heard in Oregon or Washington.

16 8. Good cause does not exist for dismissal of this action or to vacate the underlying orders at this
17 time.

18 9. Respondent has moved this judge to recuse himself on the basis of actual bias against
19 transgendered individuals. Trial judges are presumed to perform their functions regularly and
20 properly without bias or prejudice. Respondent alleges that the court's management of this case,
21 specifically including the temporary restraining orders, the CR 35 examination, and the
22 appointment of the GAL demonstrate bias. The court does not find that any of its rulings were
23 motivated by actual bias or that there are any issues related to the appearance of fairness.
24
25

1
2 10. This Court has considered the motion to recuse and finds that good cause does not exist for the
3 judge to recuse himself.
4

5
6 **Therefore, it is now, ORDERED, ADJUDGED and DECREED as follows:**

7 Respondent's Motion to Dismiss and Vacate all Orders is DENIED.

8 This Court will schedule a UCCJEA conference with the Umatilla County Circuit Court
9 within three weeks of entry of this order. The parties will be kept apprised of the status.

10 FURTHER, it is now ORDERED, ADJUDGED and DECREED that Respondent's Motion
11 to Disqualify this judge on the basis of actual bias against transgendered individuals is DENIED.

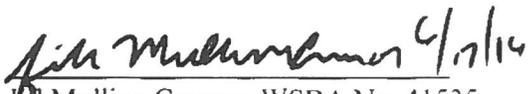
12 All other orders not inconsistent herein shall remain in full force and effect.
13

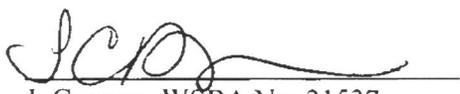
14 Dated: 6.22-16


15 Judge S. Wolfram

16 Presented by:
17 JUSTICE & EQUALITY LEGAL SERVICES, PLLC

Approved by:

18 
19 J. Mullins-Cannon, WSBA No. 41535
Attorney for Respondent

20 
21 J. Carmen, WSBA No. 31537
22 Attorney for Petitioner
23
24
25

Appendix D

FILED
KATHY MARTIN
COUNTY CLERK

2016 NOV 10 P 1:22

WALLA WALLA COUNTY
WASHINGTON

THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WALLA WALLA

In re:

SHEILA KAY PETERSON,
Petitioner,
and
MELISSA JADE PETERSON,
Respondent.

No. 14-3-00284-4

**SUPPLEMENTAL
ORDER TRANSFERRING CASE**

Clerk's Action Required

THIS MATTER, having been transferred to the Umatilla County Circuit Court of Oregon, by order dated October 5, 2016; it is further hereby ORDERED, ADJUDGED and DECREED as follows:

~~The Respondent shall be responsible for all costs associated with transferring the case files from Washington to Oregon,~~ *to be determined by Oregon.*

Dated this ^{10th} day of November, 2016 by

M. Scott Wolfram
Judge M. Scott Wolfram

Order Presented/Approved, with Notice of Presentment
Waived, by:

Kristen Du Bruille
Kristen Du Bruille, WSBA #46772
Attorney for Sheila Peterson

Jill Mullins-Cannon, WSBA #41535
Attorney for Melissa Peterson

Order

1

CARMAN LAW OFFICE, INC.
6 E. Alder Street, Ste. 418
Walla Walla, WA 99362
(509) 529-1018
(509) 526-0285, Fax

0-000001374

FILED
KATHY MARTIN
COUNTY CLERK

2016 OCT -5 P 1:00

WALLA WALLA COUNTY
WASHINGTON

THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WALLA WALLA

In re:

SHEILA KAY PETERSON,

Petitioner,

and

MELISSA JADE PETERSON,

Respondent.

No. 14-3-00284-4

ORDER TRANSFERRING CASE

Clerk's Action Required

THIS MATTER, having come before the Court for a UCCJEA conference on September 23, 2016 with Judge Paul of Umatilla County Circuit Court of Oregon, and after such conference it is now hereby ORDERED, ADJUDGED and DECREED as follows:

Walla Walla Superior Court hereby transfers its case numbers 14-2-00756-7 and 14-3-00284-4 to Umatilla County Circuit Court, and the clerks of the Walla Walla County Superior Court shall transfer all files thereunder to the Umatilla County Circuit Court.

Dated this 5 day of October, 2016 by



Judge M. Scott Wolfram

Order

1

CARMAN LAW OFFICE, INC.
6 E. Alder Street, Ste. 418
Walla Walla, WA 99362
(509) 529-1018
(509) 526-0285, Fax

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Order Presented/Approved, with Notice of Presentment
Waived, by:

Kate D. Britton #46772 for
JANELLE M. CARMAN, WSBA #31537
Attorney for Sheila Peterson

JILL MULLINS-CANNON, WSBA #41535
Attorney for Melissa Peterson

Order	2	CARMAN LAW OFFICE, INC. 6 E. Alder Street, Ste. 418 Walla Walla, WA 99362 (509) 529-1018 (509) 526-0285, Fax
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0-000001334

Appendix E

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF UMATILLA

In the Matter of the MARRIAGE of:)	CASE NO. CV140244
))
SHEILA KAY PETERSON,)
))
Petitioner,)
))
and)
))
MELISSA JADE PETERSON,)
))
Respondent.)

PETITIONER'S RESPONSE
TO ORDER TO SHOW CAUSE
RE MODIFICATION OF
CUSTODY, PARENTING TIME
AND COUNTERCLAIMS

Respondent has filed a motion to modify herein in the form of an Order to Show Cause Re Modification of Custody, Parenting Time (hereafter "Order to Show Cause"). Petitioner now appears and does hereby object to all of the child custody relief which Respondent has requested, first and foremost because the State of Oregon should no longer exercise UCCJEA subject matter jurisdiction herein. Petitioner therefore denies that this Court has UCCJEA subject matter jurisdiction herein, see ORS 109.701 through 109.834, and instead alleges that

1 UCCJEA subject matter jurisdiction is properly before the Washington
2 Superior Court for Walla Walla County for the State of Washington. The
3 State of Washington is the joint child's home state and has been the
4 child's home state for a very significant amount of time. Pursuant to the
5 UCCJEA Oregon no longer has subject matter jurisdiction, which can be
6 raised at any time, in this matter to decide child custody issues as they are
7 defined by the UCCJEA. Both the child and Petitioner, the custodial
8 parenting herein, have resided in the State of Washington for far more
9 than six months prior to the filing of Respondent's Order to Show Cause.
10

11 Should this Court continue to exercise UCCJEA jurisdiction herein
12 and/or jurisdiction as to non-UCCJEA matters then Petitioner objects in
13 general to all relief which Respondent has requested and specifically
14 objects/denies as follows:
15

16 1. Petitioner objects to and denies the relief requested in
17 Paragraph 1 of Respondent's Order to Show Cause.
18

19 2. Petitioner objects to and denies the relief requested in
20 Paragraph 2 of Respondent's Order to Show Cause. However, Petitioner
21 is willing to consider modifications to the parenting plan which will improve
22 the parenting plan and are in the best interests of the child. Again,
23 however, those modifications should be made by the Washington Superior
24

1 Court. Petitioner alleges in fact that she has made sincere efforts to
2 resolve this matter by attempting to make improvements to the parenting
3 plan, but Respondent refuses to even respond to said efforts. As such, it
4 does not appear that Respondent is proceeding in good faith.
5

6 3. Petitioner objects to and denies the relief requested in
7 Paragraph 3 of Respondent's Order to Show Cause and instead requests
8 that Respondent be ordered to pay child support to Petitioner consistent
9 with the Oregon Child Support Guidelines (hereafter "Guidelines"). Even
10 though Petitioner has had custody of the joint child, she did not originally
11 request child support from Respondent. It is now appropriate that
12 Respondent pay child support to Petitioner consistent with the Guidelines
13 beginning the date Petitioner was served with Respondent's request for
14 child support, thereby putting the issue of child support in play.
15

16 4. Petitioner objects to Paragraph 5 of the Order to Show Cause
17 and denies that she should be ordered to pay Respondent's attorney fees
18 and costs herein. Petitioner does request that Respondent be ordered to
19 reimburse Petitioner for Petitioner's attorney fees, costs and
20 disbursements incurred herein, especially where it does not appear that
21 Respondent is proceeding in good faith. ORS Chapter 107, including ORS
22 107.135.
23
24

1 5. Petitioner objects to and denies the relief requested in
2 Paragraph 7 of Respondent's Order to Show Cause in that Petitioner
3 denies that the General Judgment herein should be set aside, altered or
4 modified. Respondent has cited not authority and no reasons to set the
5 General Judgment aside.
6

7 As her counterclaims, Petitioner alleges as follows:

8 6. This Court lacks UCCJEA jurisdiction herein and all UCCJEA
9 matters should be decided by the State of Washington, Superior Court for
10 Walla Walla County, Washington. Even if this Court does not so lack
11 UCCJEA jurisdiction, this Court should decline UCCJEA jurisdiction herein
12 for the reasons that the child and the child's custodial parent no longer live
13 in Oregon and in fact live in Washington and have lived in Washington for
14 significantly more than six months prior to the filing of this Order to Show
15 Cause. Washington is the child's home state.
16

17 7. Respondent has put child support at issue and should be
18 ordered to pay child support to Petitioner consistent with the Guidelines
19 beginning the date Petitioner was served with the Order to Show Cause.
20

21 8. Respondent should be ordered to reimburse Petitioner for
22 Petitioner's attorney fees, costs and disbursements incurred herein,
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1 especially where it does not appear that Respondent is proceeding in good
2 faith. ORS Chapter 107, including ORS 107.135.

3 Therefore, for the reasons set out above, Petitioner objects to the
4 relief which Respondent has requested and instead requests and
5 counterclaims that all child custody matters be decided by the State of
6 Washington, that Respondent be ordered to pay child support to Petitioner
7 and that Respondent be ordered to reimburse Petitioner for her attorney
8 fees and costs incurred herein.
9

10 Respectfully submitted December 2, 2016.
11

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14 Steven N. Thomas, OSB #803863
15 Oregon Counsel for Petitioner
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FILED

DEC 18 2015

KATHY MARTIN
WALLA WALLA COUNTY CLERK

THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WALLA WALLA

In re the Marriage of:
SHEILA KAY PETERSON,
Petitioner,
and
MELISSA JADE PETERSON,
Respondent.

DOCKET NO. 14-3-00284-4
Parenting Plan
Temporary (PPT)

This parenting plan is a temporary plan adopted by the Court on this date.

It is Ordered, Adjudged and Decreed:

I. General Information

This parenting plan applies to the following children:

<u>Name</u>	<u>Age</u>
Elizabeth	8

II. Bases for Restrictions

2.1 Parental Conduct (RCW 26.09.191(1), (2))

See ¶ 2.2.

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2.2 Other Factors (RCW 26.09.191(3))

The respondent's involvement or conduct may have an adverse effect on the child(ren)'s best interests because of the existence of the factors which follow:

[X] A long-term emotional or physical impairment which interferes with the performance of parenting functions as defined in RCW 26.09.004.

III. Residential Schedule

3.1 Schedule for Children Under School age.

There are no children under school age.

3.2 School Schedule

Upon enrollment in school, the child shall reside with the Petitioner, except for the following days and times when the child will reside with or be with the Respondent:

Child shall have four hours of supervised visitation per week with the Respondent, supervised by VRS or other mutually agreeable supervisor. Respondent may also elect for up to six hours supervised visitation every other Saturday. VRS or her designee shall provide transportation to and from the visitation.

3.3 Schedule for Winter Vacation

The child shall reside with the Petitioner during winter vacation, except for the following days and times when the child will reside with or be with the Respondent:

See ¶ 3.2

3.4 Schedule for Other School Breaks

See ¶ 3.2.

3.5 Summer Schedule

Upon completion of the school year, the child shall reside with the Petitioner except for the following days and times when the child will reside with or be with the Respondent:

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2 See ¶ 3.2

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4 **3.6 Vacation With Parents**

5 See ¶ 3.2

6 **3.7 Schedule for Holidays**

7 See ¶ 3.2

8 **3.8 Schedule for Special Occasions**

9 See ¶ 3.2

10
11 **3.9 Priorities Under the Residential Schedule**

12 See ¶ 3.2.

13 **3.10 Restrictions**

14 [X] The respondent's residential time with the children shall be limited because there are
15 limiting factors in paragraphs 2.1 and 2.2. The following restrictions shall apply when
the children spend time with this parent: Visitation shall be supervised.

16 **3.11 Transportation Arrangements**

17 Transportation costs are included in the Child Support Worksheets and/or the Order for Child
18 Support and should not be included here.

19 Transportation arrangements for the child between parents shall be as follows:

VRS or other mutually agreeable third party shall provide transportation to and from the visit.

20 **3.12 Designation of Custodian**

21 The child named in this parenting plan are scheduled to reside the majority of the time with the
22 Petitioner. This party is designated the custodian of the child solely for purposes of all other state
and federal statutes which require a designation or determination of custody. This designation

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shall not affect either parent's or party's rights and responsibilities under this parenting plan.

3.13 Other

See Section VI, below.

3.14 Summary of RCW 26.09.430 - 480, Regarding Relocation of a Child

This is a summary only. For the full text, please see RCW 26.09.430 through 26.09.480.

If the person with whom the child resides a majority of the time plans to move, that person shall give notice to every person entitled to court ordered time with the child.

If the move is outside the child's school district, the relocating person must give notice by personal service or by mail requiring a return receipt. This notice must be at least 60 days before the intended move. If the relocating person could not have known about the move in time to give 60 days' notice, that person must give notice within 5 days after learning of the move. The notice must contain the information required in RCW 26.09.440. See also form DRPSCU 07.0500, (Notice of Intended Relocation of a Child).

If the move is within the same school district, the relocating person must provide actual notice by any reasonable means. A person entitled to time with the child may not object to the move but may ask for modification under RCW 26.09.260.

Notice may be delayed for 21 days if the relocating person is entering a domestic violence shelter or is moving to avoid a clear, immediate and unreasonable risk to health and safety.

If information is protected under a court order or the address confidentiality program, it may be withheld from the notice.

A relocating person may ask the court to waive any notice requirements that may put the health and safety of a person or a child at risk.

Failure to give the required notice may be grounds for sanctions, including contempt.

If no objection is filed within 30 days after service of the notice of intended relocation, the relocation will be permitted and the proposed revised residential schedule may be confirmed.

A person entitled to time with a child under a court order can file an objection to the child's relocation whether or not he or she received proper notice.

An objection may be filed by using the mandatory pattern form WPF DRPSCU 07.0700, (Objection to Relocation/Petition for Modification of Custody Decree/Parenting Plan/Residential Schedule). The objection must be served on all persons entitled to time with the child.

The relocating person shall not move the child during the time for objection unless: (a) the delayed notice provisions apply; or (b) a court order allows the move.

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2 If the objecting person schedules a hearing for a date within 15 days of timely service of the
3 objection, the relocating person shall not move the child before the hearing unless there is a clear,
4 immediate and unreasonable risk to the health or safety of a person or a child.\

4 IV. Decision Making

5 4.1 Day to Day Decisions

6 Each parent or party shall make decisions regarding the day-to-day care and control of the child
7 while the child is residing with that parent or party. Regardless of the allocation of decision
8 making in this parenting plan, either parent or party may make emergency decisions affecting the
9 health or safety of the child.

9 4.2 Major Decisions

10 Major decisions regarding each child shall be made as follows:

11 Education decisions [X] Petitioner
12 Non-emergency health care [X] Petitioner
13 Religious upbringing [X] Petitioner

13 4.3 Restrictions in Decision Making

14 [X] Sole decision making shall be ordered to the petitioner for the following reasons:

15 [X] One parent is opposed to mutual decision making, and such opposition is
16 reasonably based on the following criteria:

- 17 (a) The existence of a limitation under RCW 26.09.191;
18 (b) The history of participation of each parent in decision making in each of
19 the areas in RCW 26.09.184(4)(a);
20 (c) Whether the parents have demonstrated ability and desire to cooperate
21 with one another in decision making in each of the areas in
22 RCW 26.09.184(4)(a); and
23 (d) The parents' geographic proximity to one another, to the extent that it
affects their ability to make timely mutual decisions.

21 V. Dispute Resolution

22 Disputes between the parties, other than child support disputes, shall be submitted to (list person
23 or agency):

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2 [X] mediation by mutually agreeable mediator, if this box is checked and issues of domestic
3 violence or child abuse are present, then the court finds that the victim requested
4 mediation, that mediation is appropriate and that the victim is permitted to have a
5 supporting person present during the mediation proceedings, or

6 The cost of this process shall be allocated between the parties as follows:

7 [X] 50% petitioner and 50% respondent.

8 The dispute resolution process shall be commenced by notifying the other party by [X] written
9 request [] certified mail [] other:

10 In the dispute resolution process:

- 11 (a) Preference shall be given to carrying out this Parenting Plan.
12 (b) Unless an emergency exists, the parents shall use the designated process to resolve
13 disputes relating to implementation of the plan, except those related to financial support.
14 (c) A written record shall be prepared of any agreement reached in counseling or mediation
15 and of each arbitration award and shall be provided to each party.
16 (d) If the court finds that a parent has used or frustrated the dispute resolution process
17 without good reason, the court shall award attorneys' fees and financial sanctions to the
18 other parent.
19 (e) The parties have the right of review from the dispute resolution process to the superior
20 court.

21 VI. Other Provisions

22 There are the following other provisions:

- 23 a) Neither party or parent shall make negative comments regarding the other to the child or within
earshot of the child, nor shall either parent permit the child to be exposed to such comments by any
other.
b) Neither party shall discuss the case with the child.
c) Respondent shall remain in compliance with counseling with Debra Rood or one of her delegates
so as to continue addressing symptoms outlined in this report.
d) Respondent shall abstain from marijuana and alcohol.
e) Respondent shall engage in a parenting class.
f) The parties shall not have contact or communication at this time. There shall be no attempts to

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2 have communication through a third party, except as necessary to communicate through the
3 visitation supervisor regarding the child or visitation, or through counsel. Respondent shall not
4 enter Petitioner's place of employment or home or place Petitioner's place of employment or home
under surveillance. Respondent shall not enter or contact the daycare and school of the parties'
child except as provided for in this plan.

5 g) The parties agree to refrain from engaging in the publication, reproduction, or sharing, in any
6 form, of any negative communications pertaining to the other party by way of an electronic device.

7 **VII. Declaration for Proposed Parenting Plan**

8 Does not apply.

9 **VII. Order by the Court**

10 It is ordered, adjudged and decreed that the parenting plan set forth above is adopted and approved as an
order of this court.

11 **Warning:** Violation of residential provisions of this order with actual knowledge of its terms is
12 punishable by contempt of court and may be a criminal offense under RCW 9A.40.060(2) or
RCW 9A.40.070(2). Violation of this order may subject a violator to arrest.

13 When mutual decision making is designated but cannot be achieved, the parties shall make a good faith
effort to resolve the issue through the dispute resolution process.

14 If a parent fails to comply with a provision of this plan, the Respondent's obligations under the plan are
not affected.

15
16 DEC 18 2015

M. SCOTT WOLFRAM

17 Dated: _____



JUDGE S. WOLFRAM

18
19 Presented by:

Approved for entry:

20 

21 J. CARMAN, WSBA #31537
Attorney for Petitioner

22 J. MULLINS-CANNON, WSBA #41535
Attorney for Respondent

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COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

In re the Marriage of:

Melissa Jade Peterson, Appellant

v.

Sheila Kay Peterson, Respondent

No. 345891

Declaration of Service

Jill Mullins-Cannon certifies as follows:

On January 7, 2016, I served upon the following true and correct copies of the Appellant's Brief with Appendix via overnight delivery to:

Janelle Carman, WSBA No. 31537
Carman Law Office, Inc.
6 E. Alder Street,
Walla Walla, WA 99362

I certify under penalty of perjury that the foregoing is true and correct.

JUSTICE & EQUALITY LEGAL SERVICES, PLLC



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